

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-183162

DATE: JAN 27 1976

MATTER OF:

James A. Morgan - Relocation expenses

DIGEST:

Employee who purchased residence in Miami, Florida, incident to transfer to Miami from Washington, D.C., may be reimbursed for payment of Florida surtax, since surtax is "mortgage or transfer tax" within meaning of FTR para. 2-6.2(d) (May 1973). Reimbursement may not be made for payment of attorney's fee for attendance at closing or for telephone calls by attorney, since such services are advisory in nature. Reimbursement for payment of loan assumption fee, which is considered finance charge under Truth in Lending Act, is precluded by FTR para. 2-6.2(d) (May 1973).

This action is in response to a request for a decision by an authorized certifying officer whether a reclaim voucher in the amount of \$93.65 submitted by Mr. James A. Morgan, an employee of the Drug Enforcement Administration (DEA), may be certified for payment. The amount includes the following expenses incurred by Mr. Morgan in connection with the purchase of a new residence in Miami, Florida, incident to his transfer to Miami from Washington, D.C.:

Attorney's fee for attendance at closing:	\$25.00
Telephone calls by attorney	\$10.00
Florida surtax	\$23.65
Loan assumption fee	\$35.00

Reimbursement for the payment of legal fees in connection with real estate transactions is governed by Federal Travel Regulations (FPMR 101-7) para. 2-6.2(c) (May 1973), which provides as follows:

"Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed

amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

Only those parts of an attorney's fee that represent services of the type enumerated in the above-cited regulation are reimbursable. B-169621, June 25, 1970. We have consistently held that no reimbursement may be allowed for legal services that are of an advisory nature. B-183443, July 14, 1975, and cases cited therein. Of the total amount of the attorney's fee (\$150) originally claimed by Mr. Morgan, \$125 was allowed. This represented \$75 for examination of abstract, \$25 for preparation of opinion on title, and \$25 for preparation of closing statement. The \$25 now claimed was for the attendance of the attorney at the closing which was apparently of an advisory nature. Accordingly, the claim for that amount may not be allowed.

Mr. Morgan states that the telephone calls in question were made by his attorney in Miami to his attorney and his bank in Virginia and were to "settle accounts, verify payments and to release funds and real estate documents from one attorney to the other." However, in a letter dated June 21, 1974, to Mr. Morgan from his attorney in Miami, the \$10 fee is described as the "estimated cost of phone calls and phone fete [sic] for clearance of the funds" required to close the purchase of Mr. Morgan's new residence. This activity is neither of the type enumerated in FTR para. 2-6.2(c) (May 1973), nor sufficiently connected with any of those enumerated to warrant reimbursement under that regulation. Cf. B-183443, supra; cf. B-160799, October 15, 1970.

In regard to the Florida surtax on a deed, FTR para. 2-6.2(d) (May 1973) includes "mortgage and transfer taxes" customarily paid by the purchaser of a residence at a new official station as reimbursable miscellaneous expenses. Mr. Morgan's claim for reimbursement for this expense was disallowed by the DEA certifying officer on the basis of our decision B-174030 dated November 11, 1971. That case involved a reclaim for certain legal fees and a Florida "surtax charge" paid by the claimant incident to the purchase of a residence at his new duty station. In denying reimbursement of the surtax, we stated as follows:

"The record is unclear as to whether [the surtax charge] is in the nature of a mortgage or transfer tax or is a surtax based on the Florida intangible personal property tax for which reimbursement has been disallowed in previous decisions of our Office. * * *

In that case we did not have sufficient information to determine the exact status of the surtax charge. However, the record in the present case clearly indicates that the Florida surtax at issue is the surtax levied on documents relating to land by chapter 201.021(1) of Florida Statutes (1971), which is paid by the purchaser of such land pursuant to chapter 201.02(2). The following documents are specifically affected by this surtax:

" * * * deeds, instruments, or writings, whereby any lands, tenements or other realty, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or any other person by his direction * * *." FLA. STAT. ch. 201.02(1).

The Florida surtax is thus a "mortgage or transfer tax" within the meaning of FTR para. 2-6.2(d) (May 1973) and is, therefore, a reimbursable expense.

Finally, since a loan assumption fee is considered a finance charge under the Truth in Lending Act, Pub. L. No. 90-321, Title I, May 29, 1968, 82 Stat. 146, 15 U.S.C. § 1601, et seq. (1970), reimbursement for its payment is expressly precluded by FTR para. 2-6.2(d) (May 1973). B-174644, April 20, 1972.

Action on the voucher should be taken in accordance with the foregoing.

R.F. KELLER

Deputy | Comptroller General
of the United States